

In the United States Bankruptcy Court
for the

Southern District of Georgia

Augusta Division

FILED

Date 1 O'clock & 05 min PM
2-3-93

MARY C. BECTON, CLERK *ce*
United States Bankruptcy Court
Savannah, Georgia

In the matter of:

CHARLES W. HOCK, JR.

Debtor

Chapter 11 Case

Number 92-10642

MEMORANDUM AND ORDER ON MOTION FOR VALUATION

FINDINGS OF FACT

The above-captioned matter was heard in Augusta, Georgia, on November 3, 1992. On Motion of the Debtor and in the absence of objection the court agreed to physically inspect the premises due to the suggestion that the property was very unique and that it would aid the court's determination of valuation. All persons who appeared at the hearing were invited to participate in the inspection of the property which occurred on or about 10:30 a.m. All parties in interest did participate in that inspection.

Debtor was sworn and testified that he acquired the subject residence located at 2248 Cumming Road in March, 1989, for a total cost of \$450,000.00. At the time the residence was in deplorable condition having suffered from a lack of maintenance for many years. Extensive testimony ensued which included photographs to show the manner in which

the home was completely renovated and restored. Debtor has had considerable experience in this area and testified with obvious knowledge on the subject. The scope of the project included total rewiring of the residence, installation of completely new central heating and air conditioning, extensive plumbing work, extensive reworking of plaster, stripping and removal of old paint, replacement of numerous broken windows with old glass consistent with the period during which time the home was constructed, and modernization of the interior with particular reference to kitchen and bath facilities in the home. The bookkeeper of the Debtor's business kept extensive records as the work was done and the Debtor testified without contradiction that a total of \$625,413.00 in labor and materials was devoted to the restoration process. In addition, Debtor contributed the services of a professional engineer who was in his employ for a period of approximately one year at a total cost including salary and fringes of \$50,000.00. Expenses of landscaping totalled \$25,267.00 and Debtor paid an additional \$13,570.00 for shutters that were placed in the home. These sums brought total restoration costs to \$714,250.00 at cost. Debtor testified that reasonable overhead and profit would be 10% which would bring his total cost with reasonable overhead and profit to \$1,307,100.00. Debtor testified as a lay witness that he believed the value of the property to be \$1,350,000.00 to \$1,500,000.00 based on his costs and the fact that he had insured the improvements to the real estate at \$1,050,000.00 not including the land.

The home sits on a site which is a portion of a parcel of land owned by George Walton, signer of the Declaration of Independence and at one time served as the

home of Charles J. Jenkins who was the first reconstruction-era governor of the State of Georgia. The residence was initially built in 1823 and was extensively expanded at a later time. There was some dispute as to whether the home is listed on the National Register of Historic Places. After weighing all of the evidence I conclude that it is located within a neighborhood which is listed on the National Register, but that the home itself is not separately listed.

In the Spring of 1991 Debtor placed the home on the market and listed it for \$1,395,000.00. No offers were received until February 1992 at which point he received a full price offer from an individual that was contingent on the sale of a painting which he owned for \$1,000,000.00 and other financing contingencies. Because the contingencies were not met the property did not close, and no other offers have been received for a period now totalling eighteen months.

E. W. Reese, Jr., a MAI appraiser, was qualified as an expert witness and testified that he had appraised the property in 1988 for the Heffernan Estate and had updated his appraisal most recently in August of 1992. He examined the local market conditions with a particular eye toward locating properties of historical significance in Georgia and the Southeast, consulted with a number of brokers and other individuals who deal in such properties, but was unsuccessful in locating what he considered a true comparable. For the purposes of his market analysis he did use three properties in Aiken,

South Carolina, all of which are in the million dollar range, but are modern homes built in a golfing community. Reese also valued the property from a cost standpoint in which he determined the current cost for construction of a home of similar quality, deducted the applicable depreciation, and added back the land acquisition costs. For purposes of land acquisition he compared a number of and sales generally located in the "Hill" area in Augusta, Richmond County, Georgia, which ranged in price from \$103,000.00 an acre to slightly over \$200,000.00 per acre. The lot sizes ranged from the smallest of .64 acres to the largest at 1.8 acres and from these, he interpolated a land value of this three acre site of \$411,000.00.

The most nearly comparable home sale that he relied on was a 1988 sale from Cheryl Rice to William Baxter of property located on Flowing Wells Road in Augusta. Cheryl Rice was a Chapter 11 debtor in this court and the property sold by her estate included a 28 acre tract, a large home, and a number of other improvements. However, the home was built in 1972 and the location of the property was suburban rather than in the Hill district. The total sales price was \$955,000.00. Reese made certain adjustments to the Rice to Baxter transaction and arrived at an estimated market value of \$1,300,000.00. Reese testified that he had also considered the price for which the property was bid-in at a foreclosure by the holder of the first mortgage which was \$850,000.00. Reese took into consideration the fact that the property was of some historical significance, but stated that he did not adjust his market value because of that factor. He admitted there had been no

sales in excess of a million dollars in Richmond County for a number of years, although some homes have been built for sums which exceeded that amount. Within the past five years the highest resale in Richmond County of any property is \$940,000.00. He also admitted there had been a number of sales within the Hill area within the past five years but did not use any in making his market analysis. He believed the Rice comparable to be the closest because the homes are of similar design although it was new construction and despite the fact that it is located on a 28 acre suburban tract. He also testified the Rice property had a guest house, a recreation house, a barn with an office, a fishing pond, a tennis court, and a swimming pool. He valued the three acre tract on the Hill at \$70,000.00 higher than the 28 acre tract on which the Rice property is located. He also increased the value of the subject property \$247,000.00 due to the size of the home since it is approximately 10,000 square feet as opposed to the Rice home which was somewhat under 7,000 square feet. However, in doing so he disregarded the 1,200 square foot finished attic in the Rice home, the 2,800 square foot guest house, and the 1,900 square foot recreation house also on the property, and he disregarded the fact that one-third of the square footage of the subject property is on a lower level which, although is not a basement, is constructed below grade approximately four feet.

There were sales in the Hill area to which his attention was directed. He did not use 2259 Cumming Road, directly across the street from the subject property, as a direct comparison because the property was known to have had termite infestation and

because it was a Tudor style home as opposed to the subject property which is Victorian. That home sits on a 2.4 acre site, sold in 1988 for \$500,000.00, and totals approximately 10,000 square feet. The subject property's square footage is 10,375. Reese testified it was not a true comparable because it was not as well laid-out inside and did not have the same aesthetic appeal from the outside.

Ashby Krause, III, a MAI appraiser, also testified for the Debtor. He qualified as an expert and testified that he appraised the property in August of 1992. His testimony was very similar to that of Reese's although he testified that he had not consulted with Reese about the conclusions. They did discuss the property in general terms. He testified that there were no true comparables for this property, that modern homes are not the same because of the differences in craftsmanship. The nearest comparables he found were the former Rice home on Flowing Wells Road which he rated as an inferior neighborhood, three homes in the golf community in Aiken, South Carolina, one home on Monticello Street in Covington, Georgia, that sold for \$1,650,000.00 and a home on Argonne Street in Atlanta, Georgia, which sold for \$1,600,000.00, was constructed in 1913 and had many of the same characteristics as the subject property. He found the market range for comparables to be \$1,250,000.00 to \$1,350,000.00. He stated that he was not aware of Reese's valuation in 1989 or now and the fact that they used many of the same comparables he termed a coincidence. He was aware of no resales of properties in Richmond County that exceeded one million dollars. He testified that a lack of sales for a period of a year would

suggest that the property might be listed too high, but might also mean that it simply needed longer in which to sell or a larger budget to market properly. Although he discussed the property's historical significance, he stated that he added nothing to his appraisal figures based on that factor although he stated that the historical attraction of the property might increase the number of potential buyers. He utilized the Flowing Wells property comparable in 1988, but used no comparables from the immediate area including the 2259 Cumming Road property. He disregarded the Cumming Road property because it was a Tudor style. He described some of the rooms as chopped-up and mentioned the termite infestation. He admitted that it was of similar size, location, and lot size, but had no central air conditioning, had old wiring and old plumbing and stated that he was unaware of its sales price. Nevertheless, he used Flowing Wells as a better comparable despite the fact that the house had only 7,000 square feet and was of new construction in a suburban area. Krause conceded that although he toured the subject property he did not tour any of the homes in Aiken, the home in Covington, or the home in Atlanta.

The evidentiary hearing in this case was suspended at the conclusion of Krause's testimony and resumed in Augusta, Georgia, on January 8, 1993. Herbert May, Jr., testified as an expert for the creditor, First Union. He testified that he was informed that the cost of renovation together with the initial acquisition totalled approximately \$1,271,000.00. He found the property to have a total of 10,000 square feet of space with 7,000 on the two main levels and approximately 2,300 square feet on a sub-grade level. 1,100

square feet of the ground floor is unfinished basement and he calculated a total liveable dwelling of 9,300 square feet. He termed the property to have many excellent features, but found certain negatives as well, including the lack of a garage, no bedroom space on the main living level, the fact that the laundry was located in the basement, that the property has no elevator and has very steep stairwells and that it requires high maintenance. In addition, an extremely high percentage of the total living area is devoted to large hallways which separate the two wings of each floor of the house. Mr. May considered in arriving at a value whether the three acre tract could be subdivided and concluded that it could not because the home is situated in the middle of the property. Many land sales in the Hill area that suggested substantial per acre values he found to be of limited value because they had a potential for resale for building lots whereas this site is "locked into this particular house." Nevertheless, he determined that the real estate was worth \$360,000.00. In doing so his figures did not differ tremendously from the land value ascribed to the property by E. W. Reese, Jr., of \$411,000.00.

May testified that total cost invested in a property such as this is not always an accurate measure of value and that the ratio of invested dollars to acquisition cost on this property was the highest he had ever seen. In considering whether cost can be recouped he stated that renovation which goes beyond what is necessary or desirable to the general market cannot be recovered. Those renovations which only the renovating owner can enjoy or matters of personal preference are generally not recoverable. In this house he found that the

extremely expensive security system, the near industrial quality heating, ventilation and air conditioning, plumbing, wiring and other improvements were not recoverable dollar for dollar in the market place. He estimated that the property would cost \$773,000.00 to construct without applying depreciation. Depreciation estimates are highly subjective and involve both physical and functional depreciation. Items such as large hallways, location of bedroom and laundry, absence of garage and elevators, are examples of functional depreciation. Physical depreciation is a concept intended to determine the effective age of a home and is especially difficult to do with an old historic home such as this. Nevertheless he applied a thirty percent depreciation factor overall, added in his estimate of the land value and reached a value of \$851,000.00. Nevertheless neither he nor the appraisers for the Debtor felt that the cost method of valuation for property like this is as reliable as the market analysis of comparable properties.

In searching for comparables he stated that because homes are fixed to a particular piece of property he wanted to utilize comparables as nearly as possible within the same area. He concluded that four comparables, one on the same street, and three others located in the Hill area provided the best comparables. Of the four the property located across the street at 2259 Cumming Road which is presently under contract for \$611,000.00 he believed far superior. He found it comparable because it is located in the same block of the same street, contains roughly the same amount of square footage although it is somewhat larger and because it is located on a comparable size piece of property. He found that it was

better than the subject in some respects because it has a full basement, three income producing cottages that generate \$25,000.00 per year in revenue, because it is built out of stone and brick which is much lower maintenance than the frame construction of the subject property and because it has an expensive yet low maintenance slate roof. The property last sold in 1989 for \$500,000.00 after it was known that it had suffered termite infestation. The house, however, has been treated, has been reinspected and has been certified to be free of any further infestation problems. He also recognized that the comparable has no central air conditioning and while located on a corner lot is across the street from a cemetery which caused him to reduce the value. Based on the adjustments he made to the contract price of \$611,000.00 he concluded that the subject property has a fair market value of \$717,000.00.

A comparable located at 2529 Walton Way on a 1.85 acre tract sold most recently in May 1992 for \$385,000.00. The home is substantially smaller at 5,500 square feet. As a result he adjusted the value up substantially for that but reduced it due to smaller land size although mentioning that 1.85 acres on Walton Way might be just as valuable as the three acres on Cumming Road. He found his adjusted valuable of this comparable to be \$648,000.00. He also employed a comparable at 3029 Bransford Road which gave him an indicated value of the subject property of \$898,000.00. Interestingly, the Bransford Road property sold in 1989 for \$500,000.00 and had \$208,000.00 in renovations and additional construction. It subsequently sold for \$585,000.00. In Mr. May's analysis this suggested that only \$85,000.00 of the \$208,000.00 in improvements or forty-one percent had been recovered

in the market place. Because \$821,000.00 was spent in renovations of the subject property, as a manner of testing his analysis, he applied the same forty-one percent ratio to the total improvements, added back in the original purchase price of \$450,000.00 and arrived at an indicated value of \$778,000.00. Finally, he used property located at 2840 Walton Way which after adjustments yielded an indicated value of \$761,000.00.

Based on the four comparables and the renovation recovery analysis his lowest indicated value was \$648,000.00 and his highest indicated value was \$898,000.00. He testified he did not use Aiken, South Carolina, comparables because it is not within commuting distance to Augusta, the location is not comparable, and that the homes are all new construction located in a golf course community. Considerable cross-examination occurred over his use of Marshal and Swift cost figures and whether he had allowed adequate adjustments to the base cost figures per square foot based on quality of construction and so forth. While it was demonstrated that some of his cost figures may have been subject to further adjustment, I have ultimately concluded that the cost method is not of any particular use in my analysis and thus cost figures testified to by all appraisers have been disregarded.

With respect to 2259 Cumming Road, Mr. May took the \$611,000.00 contract price, added \$53,200.00 because the subject property has central air conditioning. He made no reduction due to the subject's square footage. He did subtract \$34,000.00 because the subject property lacks income producing cottages and garages for automobiles, but he added

\$122,000.00 because he felt the subject property to have a preferable location. His indicated value of \$717,000.00 did not include a figure for the large porches on the subject property, but he stated that he had not made an adjustment for the slate roof which he believed to be a substantial additional value in the comparable. After further analysis of all the comparables he concluded that the subject property has a fair market value of \$850,000.00.

CONCLUSIONS OF LAW

11 U.S.C. Section 506(a) provides with respect to questions of value that

Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

Clearly, valuation is a very fact specific process.

Based on the foregoing summary of the evidence it is clear that this case has presented widely fluctuating testimony as to the value of the property in question. Essentially, the Debtor's testimony places a value of \$1.3 million on the property whereas the Bank's testimony establishes it at \$850,000.00. The differential of approximately a half of a million dollars or roughly a fifty percent swing from the lowest to the highest figure is indeed

substantial. However, the court is fortunate to have had three very well qualified appraisers give their testimony. Having carefully weighed all of the testimony I conclude that the value of the property is \$850,000.00.

This is not a case, as often occurs, where neither expert's testimony can be accepted in its entirety, but rather elements of opinions from both sides are persuasive upon the court. Rather, because of the unique nature of the property being appraised, the result is dictated by the court's assessment of which appraiser chose the most appropriate comparables. It was clear from the testimony that while under the law all real estate is unique, this particular residence and adjoining grounds has no perfect comparable that any appraiser was able to locate or at least none which has sold within a relevant time period surrounding the hearing. The Bank's appraiser, however, determined that the most appropriate comparables to use were sales of large homes located in the "Hill" area of Augusta, Georgia, within a mile or two of the subject property. While some of the properties were significantly smaller in size or in poorer condition, the geographic location and the appraiser's methodology in adjusting for differences in size or quality of construction makes his conclusions the most reliable. The evidence of Mr. Reese on behalf of the Debtor was based on comparables in a new, though exclusive, subdivision in Aiken, South Carolina, forty miles away and a single family residence located on a 28 acre tract in suburban/rural Richmond County. I conclude that neither geographic location is sufficiently comparable to the Hill Area in Augusta for these comparables to be a reliable indicator of value. Mr.

Krause, on behalf of the Debtor, used the same Richmond County property as Mr. Reese, that is the Flowing Wells Drive 28 acre parcel and then compared properties in the million dollar range located in Covington, Georgia and Atlanta which he had never visited. While the homes in Atlanta and Covington may have been older homes, I conclude that neither city is a reliable market indicator for Augusta, Georgia. Accordingly, I find the comparables utilized by Mr. May on behalf of the Bank to be the most appropriate comparables and the methodology by which he adjusted properties of differing size, differing quality of construction, or state of repair, appeared reasonable and within acceptable standards for arriving at his conclusion.

In particular I agree with his conclusion that property located almost directly across the street from the subject property is perhaps the best single comparable of any employed. It differs from the subject property in that it is an English Tudor style home and the subject property is an amalgamation of Federal style and Victorian. Both homes are located on tracts of approximately three acres. The subject property, having been extensively renovated in 1989 and 1990 has certain advantages over the comparable because of its new HVAC system, new plumbing, new wiring and additional insulation. The comparable, however, is effectively 2,000 square feet larger, requires substantially less maintenance, has three cottages on the three acre site which are income producing, has garage facilities for automobiles which the subject property lacks, and although different has at least equal "curb appeal" as the subject house. I am not unmindful of the history of the subject property in

that it is built on land once owned by Georgia Walton, a signer of the Declaration of Independence, however, no appraiser has ascribed any monetary value to that aspect of the subject property. Thus, while it is a matter of interest to patriots or history buffs, there does not appear to be a market impact. Clearly the house itself was built much later than the colonial period and this quite likely accounts for that fact.

The comparable was disregarded by the Debtor's experts for several reasons including lack of central air conditioning, previous termite and woodbore infestation which was well-known in the community, and an awkward third floor plan resulting from the fact that the third floor was originally designed as servants' quarters. I concluded, however, that the Bank's expert, Mr. May, made an appropriate adjustment between the comparables to account for the lack of central air conditioning in the comparable and the recent renovation of the subject property. I further find that the knowledge of previous infestation does not adversely impact the value of this comparable because it has been fully treated and monitored and has been demonstrated five years after the incident to the market to be free of any such infestation. With respect to the third floor layout of the comparable, I conclude that the "basement" level space in the subject property is similarly lacking in appeal. In the subject property the lowest floor is not a true basement but is built approximately four feet below grade level. As such it is clearly not where primary living activities will take place and indeed is devoted largely to utility space and a three room complex which has served and can continue to serve as a separate apartment. Accordingly, the deficiencies of the third floor

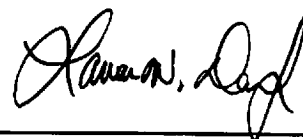
layout of the comparable are insufficient to have led the Debtor's appraisers to have disregarded it as the best overall indicator of value of the subject property. Moreover, the Bank's appraiser made no adjustment for the fact that the comparable is 2,000 square feet larger than the subject property and the fact that he did not take any of what might have been a substantial reduction in the value of the subject property due to its smaller size provides additional leeway for his conclusion. Finally, based on the appraiser's adjustments to this comparable he found an indicated value of the subject property at \$717,000.00. Rather than rely exclusively on that figure, he factored in the other three comparables located in the Hill district which had indicated comparable values ranging from \$648,000.00 to \$898,000.00 and ultimately concluded that \$850,000.00 was the true market value of this property. I agree with that conclusion.

In so ruling I do not ignore the fact that the Debtor has invested over \$1,160,000.00 out-of-pocket, considering his acquisition cost of the property and the dollars actually spent on renovation. I am also aware of the fact that if he had performed this work as a contractor for another owner an additional twenty percent in overhead and profit would have been added to that so the contract price for a third party would, under Mr. Hock's analysis, be \$1.3 million. It is clear that Mr. Hock took great pains to insure that the renovation and the restoration of this residence would be done with the greatest of care and devotion and that only the finest quality of workmanship and material would go into it. It is undisputed, however, by all appraisers that there are many instances where the dollars

invested in additions to the home or in the renovation and restoration of it may not be fully recoverable in the market place. The fact that those improvements are considered worthwhile by an individual who happens to be the current owner does not insure that that perception will be shared by others. This appears, regretfully, to be such a case. Notwithstanding the apparent best of intentions in making the investment he did in this home to insure its historical integrity it appears that the investment in the restoration and renovation far exceeded the level which would permit that investment to be recovered dollar-for-dollar.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the value of the Debtor's former residence located at 2248 Cumming Road be determined to be \$850,000.00 in these proceedings.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 21st day of January, 1993.